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COPY OF PAPERS  
ORIGINALLY FILED

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application : Eric Beckman, et al.  
Serial No. : 10/036,329  
Filed : October 19, 2001  
For : Broadcast Browser Including Multi-Media  
Tool Overlay and Method of Providing a  
Converged Multi-Media Display Including  
User-Enhanced Data  
Attorney's Docket : WAVE-004XX  
Examiner : \*\*  
Group Art Unit : 2643

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on 8-30-02.

By   
Daniel J. Bourque  
Registration No. 35,457  
Attorney for Applicant(s)

PETITION TO ACCEPT OATH AND DECLARATION UNDER 37 CFR 1.47

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Sir:

Pursuant to 37 CFR 1.47, two of the applicants and co-inventors in the above-identified application submit an Oath and Declaration made on behalf of Michael Perhaes. The two below named co-inventors certify upon information and belief that all facts contained within the Oath and Declaration are correct.

Enclosed please find a Declaration in Support of this Petition signed by Simon Tidnam, Manager of Marketing of Wavexpress, assignee

In re: Eric Beckman, et al.

Filed: October 19, 2001

Serial No.: 10/036,329

Page 2


of two of three of the named co-inventors, and Daniel J. Bourque, Wavexpress patent counsel, setting forth the facts offered to prove the unavailability of Michael Perhaes, and his refusal, after diligent effort, to sign an Oath and Declaration, and his obligation to assign his rights in the invention which is the subject of this application.

Accordingly, Applicants hereby petition the Commissioner to accept the enclosed Oath and Declaration made on behalf of Michael Perhaes by the other co-inventors of the instant patent application in lieu of an originally signed Oath and Declaration. The Petition fee of \$130.00 is enclosed. If additional fees are required and not enclosed, the Commissioner is authorized to charge Deposit Account No. 02-3285 for the additional fees.

Respectfully submitted,

Eric Beckman, et al.

By

  
Daniel J. Bourque  
Registration No. 35,457  
Attorney for Applicant(s)

BOURQUE & ASSOCIATES, P.A.  
835 Hanover Street, Suite 301  
Manchester, New Hampshire 03104  
Telephone: (603) 623-5111  
Facsimile: (603) 624-1432

Date: 8-30-02



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ORIGINALLY FILED

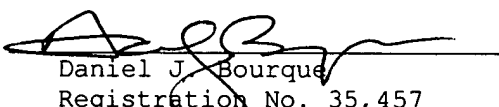
PATENT

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By

  
Daniel J. Bourque  
Registration No. 35,457  
Attorney for Applicant(s)

DECLARATION IN SUPPORT OF PETITION PURSUANT TO 37 CFR 1.47

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Sir:

Simon Tidnam declares that:

1. I am Simon Tidnam, and am employed as the Manager of Marketing for Wavexpress with offices at One Pennsylvania Plaza, Suite 2400, New York, New York.

2. Wavexpress is the assignee by two of the three named inventors in the above referenced patent application. A copy of each of the executed assignments of Michael Sprague and Eric Beckman is attached as Exhibits A and B.

3. The third named inventor in the patent application, Michael Perhaes, was, at all times relevant to the application and pursuant to his employment agreement with Wavexpress, and is under a contractual obligation to assign the rights to any and all inventions developed pursuant to his employment with Wave Express. A copy of his executed employment agreement is attached as Exhibit C. His last known address is 261 West 21<sup>st</sup> Street, Apartment 21, New York, NY 10011.

4. Mr. Perhaes' employment with Wavexpress ended on January 15, 2002.

5. On May 21, 2002 and May 29, 2002 I requested by electronic mail that Mr. Perhaes execute an oath and declaration and an assignment of his rights in the above referenced patent application in favor of Wave Express. The assignment documents were attached to the electronic mail. Copies of those electronic mail messages are attached as exhibits D and E.

6. Notwithstanding my repeated requests, Mr. Perhaes has refused to execute the requested assignment without additional compensation, to which he is not entitled pursuant to his employment agreement. A copy of such a refusal contained in an electronic mail message is attached as Exhibit F.

The undersigned, Simon Tidnam, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful

In re: Eric Beckman, et al.

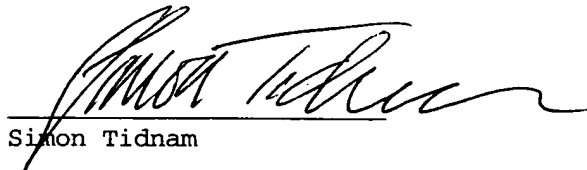
Filed: October 19, 2001

Serial No.: 10/036,329

Page 3

false statements may jeopardize the validity of the subject application or any patent resulting therefrom, declares that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

08/19/02  
Date

  
Simon Tidnam

-----Original Message-----

**From:** Simon Tidnam

**Sent:** Tuesday, May 21, 2002 5:58 PM

**To:** 'perhaes@aol.com'

**Subject:** Hi

Hi Michael,

Hope you are doing well. I need to arrange a time for us to meet. As part of a patent filing I need to ask you to sign an assignment, witnessed by a Notary. We can do that at Green Point Bank downstairs. Is there any chance we could do this on Friday? If you have some time I'd like to buy you lunch afterwards.

Look forward to seeing you again,

Simon

(917) 339 9083

08/16/2002

**From:** Simon Tidnam [stidnam@wavexpress.com]  
**Sent:** Thursday, August 15, 2002 1:44 PM  
**To:** dcoolidge@nhpatlaw.com  
**Subject:** FW: Patent Assignment w/ attachment

-----Original Message-----

**From:** Perhaes@aol.com [mailto:Perhaes@aol.com]  
**Sent:** Friday, May 31, 2002 12:50 PM  
**To:** Simon Tidnam  
**Subject:** Re: Patent Assignment w/ attachment

Simon-

I'll sign the patent assignment, but not for a dollar. If Wavexpress wants to offer a reasonable fee for this relinquishment, I'm open.

Michael



## WaveXpress, Inc. Employment Agreement

### 1. Confidential Information

- 1.1 Employee represents and warrants that Employee is free of any contractual restrictions and restraints in entering this Agreement, and has not and will not, in connection with this employment divulge any confidential information, trade secrets, or copyright-protected information of any prior employer or of any other third party.
- 1.2 Employee recognizes and acknowledges: (i) that the software products developed by WaveXpress contain information that is confidential to WaveXpress and its clients. In addition, WaveXpress clients and prospective clients (Clients) frequently furnish to WaveXpress confidential information concerning their affairs so that WaveXpress may perform those services. Moreover, both WaveXpress and its Clients have business information which they keep in confidence; (ii) that the goodwill and competitive ability of WaveXpress depends, among other things, upon it keeping such information confidential. By reason of his/her duties, Employee may come into possession of such confidential information.
- 1.3 Employee agrees that, during the term of his/her employment, and forever thereafter, he/she shall keep confidential all such information and material provided to him/her by WaveXpress or its Clients, excepting only such information as is already known to the public or becomes known to the public through no action of the employee, and that he/she shall not release, use, or disclose the same except with the prior permission of WaveXpress. Employees obligation to keep such information confidential shall survive the termination or cancellation of this Agreement or Employees employment, even if by breach or wrongful termination by WaveXpress. In case of any breach by Employee of his/her obligations with respect to confidential information by Clients of WaveXpress, such Clients shall be deemed to be third party beneficiaries of this Agreement and may bring an action to enforce its terms directly against Employee. WaveXpress and its Clients, or either of them, may seek and obtain inductive relief against the breach or threatened breach of Employees obligations under this paragraph, in addition to any other legal remedies that may be available.
- 1.4 All papers, memoranda, notes, reports, charts, programs, data or other documents of any kind relating to the business of WaveXpress or to the business of its Clients shall be turned over to WaveXpress upon the termination of Employees employment.

### 2. Non-Compete

- 2.1 During the term of this Agreement and for twelve (12) months following termination of Employees employment for any reason:
  - (i) Employee shall not, directly or indirectly, either as an individual, as an employee or member of a partnership, or as an employee, officer, director or stockholder of any corporation, solicit or accept, or advise anyone else to solicit or accept, without prior permission, any business for computer software development and related activities from any Client, or from the personnel of any Client with whom Employee had management responsibility for such business or from whom Employee had management responsibility to solicit any business during the time Employee was employed by WaveXpress;
  - (ii) Employee shall not offer employment to, or advise anyone else to offer employment to, any employee of WaveXpress, during such period;

10/1/99

- (iii) Employee shall not directly or indirectly use or make available to any person, firm or corporation the proprietary knowledge and trade secrets of the business of WaveXpress gained by him/her during the period of his/her employment, whether Employee is acting as individual, partner, stockholder, director, officer, employee, or consultant, or in any other capacity.

2.2 Employee hereby acknowledges that the limitation as to time and the limitation on the character or nature placed on his/her subsequent employment are reasonable and fair and will not prevent or materially impair his/her ability to earn a livelihood.

### 3. Ownership of Work Product


During his/her employment, Employee will be expected to do creative work which may lead to inventions, discoveries, developments, modifications, procedures, ideas, innovations, systems programs, know how, literary properties, and other work products (collectively the Work Product). Employee agrees that the Work Product of the Employee during his/her employment by WaveXpress shall be the sole and exclusive property of WaveXpress and Employee hereby assigns to WaveXpress all rights to the Work Product. To the extent that any such Work Product is copyrightable, it shall be deemed to be a work for hire within the meaning of the Copyright Law. Consideration for such assignment is hereby acknowledged. WaveXpress may, at its discretion, affix such notices and take such steps as it deems reasonably appropriate to secure and perfect copyright protection in the Work Product anywhere in the world. To the extent that any such Work Product may be patentable, WaveXpress may take the name of Employee or otherwise in the United States and elsewhere and Employee shall, on request, assign any such applications and any patents resulting therefrom to WaveXpress. The Employee shall take all such further steps as may be reasonably requested by WaveXpress to perfect the sole and exclusive ownership of the Work Product to WaveXpress.

The Employee will own, and WaveXpress will not claim, non-employment related Work Product that meets the following rules:

1. It is not related to the Employee's job responsibilities and duties.
2. It is not related to corporate projects and developments at WaveXpress.
3. It was developed entirely on the Employee's own time and its development did not involve any WaveXpress resources.

Agreed To:

MICHAEL PERHAES  
(Print Name)

  
(Signature)

Date:

5/16/2000

10/1/99

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.

  
Michael Sprague

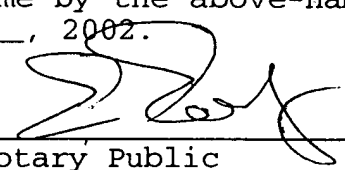
Date: 5/30/2002

State of NY

County of NY

)  
) ss.  
)

Subscribed and sworn to before me by the above-named Michael Sprague this 30 day of MAY, 2002.

  
Notary Public

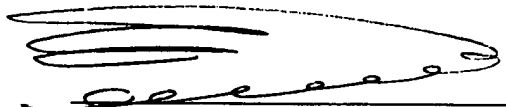
My Commission Expires:

6.30.03

(Seal)

EDWIN H. BARRY  
Notary Public, State of New York  
No. 4612376  
Qualified in Westchester County  
Commission Expires June 30, 2006

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.



Eric Beckman

Date: 5-30-2002

State of NY

)

County of NY

) ss.

Subscribed and sworn to before me by the above-named Eric Beckman this 30 day of MAY, 2002.



Notary Public


My Commission Expires:

6.30.03

(Seal)

EDWIN H. BASTY  
Notary Public, State of New York  
No. 402376  
Qualified in Westchester County  
Commission Expires June 30, 2003

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.

  
Michael Sprague

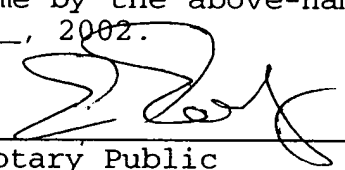
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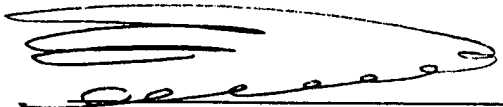
My Commission Expires:

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(Seal)

**EDWIN H. BASTY**  
Notary Public, State of New York  
No. 4612376  
Qualified in Westchester County  
Commission Expires June 30, 2003

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.



Eric Beckman

Date: 5-30-2002

State of NY

County of NY

)  
) ss.  
)

Subscribed and sworn to before me by the above-named Eric Beckman this 30 day of MAY, 2002.



Notary Public

My Commission Expires:

6.30.03

(Seal)

**EDWIN H. BASTY**  
Notary Public, State of New York  
No. 402376  
Qualified in Westchester County  
Commission Expires June 30, 2008

# WaveXpress, Inc.

## Employment Agreement

### 1. Confidential Information

- 1.1 Employee represents and warrants that Employee is free of any contractual restrictions and restraints in entering this Agreement, and has not and will not, in connection with this employment divulge any confidential information, trade secrets, or copyright-protected information of any prior employer or of any other third party.
- 1.2 Employee recognizes and acknowledges: (i) that the software products developed by WaveXpress contain information that is confidential to WaveXpress and its clients. In addition, WaveXpress clients and prospective clients (Clients) frequently furnish to WaveXpress confidential information concerning their affairs so that WaveXpress may perform those services. Moreover, both WaveXpress and its Clients have business information which they keep in confidence; (ii) that the goodwill and competitive ability of WaveXpress depends, among other things, upon it keeping such information confidential. By reason of his/her duties, Employee may come into possession of such confidential information.
- 1.3 Employee agrees that, during the term of his/her employment, and forever thereafter, he/she shall keep confidential all such information and material provided to him/her by WaveXpress or its Clients, excepting only such information as is already known to the public or becomes known to the public through no action of the employee, and that he/she shall not release, use, or disclose the same except with the prior permission of WaveXpress. Employees obligation to keep such information confidential shall survive the termination or cancellation of this Agreement or Employees employment, even if by breach or wrongful termination by WaveXpress. In case of any breach by Employee of his/her obligations with respect to confidential information by Clients of WaveXpress, such Clients shall be deemed to be third party beneficiaries of this Agreement and may bring an action to enforce its terms directly against Employee. WaveXpress and its Clients, or either of them, may seek and obtain inductive relief against the breach or threatened breach of Employees obligations under this paragraph, in addition to any other legal remedies that may be available.
- 1.4 All papers, memoranda, notes, reports, charts, programs, data or other documents of any kind relating to the business of WaveXpress or to the business of its Clients shall be turned over to WaveXpress upon the termination of Employees employment.

### 2. Non-Compete

- 2.1 During the term of this Agreement and for twelve (12) months following termination of Employees employment for any reason:
  - (i) Employee shall not, directly or indirectly, either as an individual, as an employee or member of a partnership, or as an employee, officer, director or stockholder of any corporation, solicit or accept, or advise anyone else to solicit or accept, without prior permission, any business for computer software development and related activities from any Client, or from the personnel of any Client with whom Employee had management responsibility for such business or from whom Employee had management responsibility to solicit any business during the time Employee was employed by WaveXpress;
  - (ii) Employee shall not offer employment to, or advise anyone else to offer employment to, any employee of WaveXpress, during such period;

10/1/99

- (iii) Employee shall not directly or indirectly use or make available to any person, firm or corporation the proprietary knowledge and trade secrets of the business of WaveXpress gained by him/her during the period of his/her employment, whether Employee is acting as individual, partner, stockholder, director, officer, employee, or consultant, or in any other capacity.

2.2 Employee hereby acknowledges that the limitation as to time and the limitation on the character or nature placed on his/her subsequent employment are reasonable and fair and will not prevent or materially impair his/her ability to earn a livelihood.

### 3. Ownership of Work Product


During his/her employment, Employee will be expected to do creative work which may lead to inventions, discoveries, developments, modifications, procedures, ideas, innovations, systems programs, know how, literary properties, and other work products (collectively the Work Product). Employee agrees that the Work Product of the Employee during his/her employment by WaveXpress shall be the sole and exclusive property of WaveXpress and Employee hereby assigns to WaveXpress all rights to the Work Product. To the extent that any such Work Product is copyrightable, it shall be deemed to be a work for hire within the meaning of the Copyright Law. Consideration for such assignment is hereby acknowledged. WaveXpress may, at its discretion, affix such notices and take such steps as it deems reasonably appropriate to secure and perfect copyright protection in the Work Product anywhere in the world. To the extent that any such Work Product may be patentable, WaveXpress may take the name of Employee or otherwise in the United States and elsewhere and Employee shall, on request, assign any such applications and any patents resulting therefrom to WaveXpress. The Employee shall take all such further steps as may be reasonably requested by WaveXpress to perfect the sole and exclusive ownership of the Work Product to WaveXpress.

The Employee will own, and WaveXpress will not claim, non-employment related Work Product that meets the following rules:

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3. It was developed entirely on the Employee's own time and its development did not involve any WaveXpress resources.

Agreed To:

MICHAEL PERHAES  
(Print Name)

  
(Signature)

Date:

5/16/2000

10/1/99



# WaveXpress, Inc.

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10/1/99

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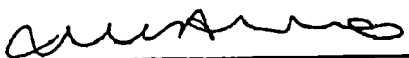
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Agreed To:

MICHAEL PERHAES  
(Print Name)

  
(Signature)

Date:

5/16/2000

-----Original Message-----

**From:** Simon Tidnam

**Sent:** Tuesday, May 21, 2002 5:58 PM

**T :** 'perhaes@aol.com'

**Subject:** Hi

Hi Michael,

Hope you are doing well. I need to arrange a time for us to meet. As part of a patent filing I need to ask you to sign an assignment, witnessed by a Notary. We can do that at Green Point Bank downstairs. Is there any chance we could do this on Friday? If you have some time I'd like to buy you lunch afterwards.

Look forward to seeing you again,

Simon

(917) 339 9083

08/16/2002

-----Original Message-----

**From:** Simon Tidnam

**Sent:** Wednesday, May 29, 2002 9:43 AM

**T :** 'Perhaes@aol.com'

**Subject:** Patent Assignment w/ attachment

Michael,

I had the mistaken impression we were meeting this week. These documents have to be filed with the Patent Office by May 30th. Please fax a signed, notarized copy to me today or tomorrow. The assignment is attached. I will also fax it to Serena again.

I'm sorry for any inconvenience and greatly appreciate your help.

Thanks,

Simon

(917)339-9083

-----Original Message-----

**From:** Perhaes@aol.com [<mailto:Perhaes@aol.com>]

**Sent:** Tuesday, May 28, 2002 7:00 PM

**To:** Simon Tidnam

**Subject:** Re: patent assignment

Can't do it this week. I'm in SF til mid-month.

08/16/2002

-----Original Message-----

**From:** Simon Tidnam

**Sent:** Wednesday, May 29, 2002 9:43 AM

**T :** 'Perhaes@aol.com'

**Subject:** Patent Assignment w/ attachment

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Simon

(917)339-9083

-----Original Message-----

**From:** Perhaes@aol.com [<mailto:Perhaes@aol.com>]

**Sent:** Tuesday, May 28, 2002 7:00 PM

**To:** Simon Tidnam

**Subject:** Re: patent assignment

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08/16/2002

**From:** Simon Tidnam [stidnam@wavexpress.com]  
**S nt:** Thursday, August 15, 2002 1:44 PM  
**T :** dcoolidge@nhpatlaw.com  
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-----Original Message-----

**From:** Perhaes@aol.com [mailto:Perhaes@aol.com]  
**Sent:** Friday, May 31, 2002 12:50 PM  
**To:** Simon Tidnam  
**Subject:** Re: Patent Assignment w/ attachment

Simon-  
I'll sign the patent assignment, but not for a dollar. If Wavexpress  
wants to  
offer a reasonable fee for this relinquishment, I'm open.

Michael